IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 5084 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE DN PATEL

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

MANUBHAI RATILAL PATEL - Petitioner(s)
Versus
STATE OF GUJARAT & 2 - Respondent(s)

==========

Appearance :
MR MEHUL H RATHOD for the Petitioner.
Mr. Siraj Gori, Assistant GOVERNMENT PLEADER for Respondent no.1.
MR HS MUNSHAW for Respondent no.2.

==========

CORAM : HONOURABLE MR.JUSTICE DN PATEL

Date : 28/03/2006

ORAL JUDGMENT

Rule. Learned Assistant Government Pleader Mr. Siraj Gori waives service of Rule on behalf of respondent no.1. Learned advocate Mr.Munshaw waives service of Rule

on behalf of respondent no. 2.

2. The present petition has been preferred against the order dated 14th March, 2006 passed by the District Development Officer, Gandhinagar (Annexure “N” to the memo of the petition), whereby an opportunity of cross-examination of witnesses has not been given to the petitioner, mainly on the ground that upon certain dates of adjournments, the petitioner has not come forward for cross-examining witnesses and therefore, the petitioner has lost the right of cross-examination.

3. The learned advocate for the petitioner mainly submitted that the impugned order passed by the D.D.O., Gandhinagar is patently illegal and dehors the facts of the case and therefore, deserves to be quashed and set aside. The D.D.O., Gandhinagar has not appreciated the fact of sickness of mother of the petitioner and that on 10th February, 2006, the date of adjournment which is referred to in the impugned order, is the date of death of the mother of the petitioner. These facts were brought to the notice of the D.D.O., Gandhinagar for grant of longer date of adjournment but overenthusiastic D.D.O., Gandhinagar grants very frequent dates of adjournment within short span of

time. The D.D.O. ought to have applied his mind before grant of adjournments within such short span of time. The next date of adjournment given was 17th February 2006; 24th February, 2006; then 1st March, 2006 and then 6th March, 2006. It is also submitted by the learned advocate for the petitioner that the D.D.O. has not allowed the cross-examination of the witnesses. The allegations are levelled by the respondents and hence the burden of proof is upon the respondent authorities. The examination-in-chief has to be taken by the concerned respondent officers and the cross-examination ought ot have been allowed to the petitioner. The principles of natural justice have been grossly violated by the respondent authorities and therefore, the impugned order dated 14th March, 2006 deserves to be quashed and set side and the matter may be remanded to the District Development Officer, Gandhinagar for its fresh decision and an opportunity of cross-exmination may be afforded to the petitioner.

4. I have also heard the learned advocate Mr. Munshaw for the respondent no. 2. He has submitted that in all there are 12 adjournments and the petitiner has not availed of the opportunity of cross-examination of witnesses and therefore, he has lost the right of

cross-examination. The learned advocate for the respondent no. 2 submitted that in fact, no such opportunity for cross-examination could have been given by the D.D.O., as it is not contemplated under section 57 of Gujarat Panchayats Act, 1993 and hence the impugned order passed by the D.D.O., Gandhinagar is true, correct and in consonance with facts of the case.

5. I have also heard the learned Assistant Government Pleader for respondent no.1 State who has submitted that it is the duty of the D.D.O. to hear and decide as to the right of the petitioner of cross-examination of the witnesses and has pointed out in the impugned order dated 14th March, 2006 that there are as many as one dozen opportunities referred to, have been given, which have not been availed by the petitioner and therefore, the petitioner has lost right of cross-examination of the witnesses.

6. Having heard the learned counsel for the rival parties and looking to the facts and circumstances of the casse, in my view, the order dated 14th March, 2006 passed by the District Development Officer, Gandhingar deserves to be quashed and set aside mainly for the following facts and reasons.

(i)The D.D.O. has not appreciated the genuine difficulties of the petitioner. Initially there was sickness and on 10th February, 2006 (which is the date on which the matter was adjourned), the mother of the petitioner had expired. In such circumstances, when request comes, for adjournment, the D.D.O. ought to have appalied his mind for grant of longer time. But instead of longer time, immediately next date given was 17th February, 2006 and thereafter, at the interval of 3-4 dates, next adjournments have been given. The death certificate of the petitioner's mother is also annexed at Annexure “L” to the memo of the petition, which reveals that 10th February, 2006 is the date on which the mother of the petitiner had expired. 15 days' time was asked for. The D.D.O. ought to have granted longer date of adjournment. In such circumstances, it cannot be said that the right of cross-examination has been lost by the petitioner.

(ii) Looking to the facts of the case, it

seems that the notice has been issued under section 57 of the Act of 1993. The averments are made by the respondent authorities as to the existence of certain facts. The burden of proof lies upon him who makes allegation and not upon who denies. It is the respondent authority no. 2 who has made certain allegations against the petitioner. The respondent authorities have to prove those allegations and therefore, the petitioner has got a right of cross-examination of witnesses which the petitioner had demanded in his examination. But because of death of the mother of the petitioner, right of cross-examination could not be availed by the petitioner. The D.D.O. has wrongly arrived at a conclusion that even in such circumstances, right of cross-examination has been lost. It is not the case of the D.D.O., Gandhinagar while passing the impugned order that there is no need to give cross-examination to the petitioner as argued by the learned advocate for the respondent no. 2. The D.D.O., Gandhinagar has never pointed out in his order that no such right is ever in

existence. On the contrary, it has been pointed out by the D.D.O, Gandhinagar that though the said opportunity was given, it has not been availed within reasonable time by the petitioner and therefore, thepetitioner has lost such right.

(iii)Looking to all these facts, I am of the opinion that the D.D.O., Gandhinagar ought to have granted reasonably longer date of adjournment. No such government officer should be so sensitive to give shorter date of adjournment in case of death of nearest family member. Always mother is the nearest and dearest family member for every son or daughter. Such eventuality could have been avoided by the D.D.O., Gandhinagar by taking a pragmatic view of the matter.

7. As a cumulative effect of all the above facts and reasons, the impugned order dated 14th March, 2006 passed by the District Development Officer, Gandhinagar (Annexure “N” to the memo of the petition) is hereby quashed and set aside. The District Development Officer, Gandhinagar is directed to decide the

application of cross-examnination given by the petitioner, as early as possible and practicable. Rule made absolute accordingly with no order as to costs.

(D.N.Patel,J)

***darji